



February 7, 2017

Best Can Trucking Ltd.  
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Surrey, BC V3S 8N2

**Via Email: [dispatch@bestcan.ca](mailto:dispatch@bestcan.ca)**  
**Original to follow via mail**

Attention: Karamjit Sandhu

## **Commissioner's Decision**

### **Best Can Trucking Ltd. (CTC Decision No. (02/2017))**

#### **Introduction**

1. Best Can Trucking Ltd. ("Best Can") is a licensee within the meaning of the *Container Trucking Act* (the "*Act*"). Under Sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by Regulation, and a licensee must comply with those statutorily established rates. In particular, Section 23(2) states:

A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

2. Under Section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the "*Act*, the regulations and a licence..." whether or not a complaint has been received by the Commissioner. Under Section 26 of the *Act*, any person may make a complaint to the Commissioner that a licensee has contravened a provision of the *Act*. Under Section 29, the Commissioner reviews such complaints and, under Section 31, may conduct an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* (the "*Regulation*") or a licence.
3. As well, under Appendix D to Schedule 1 of the Container Trucking Services Licence the Commissioner may direct a licensee to provide a compliance letter from a Certified Professional Accountant.

#### **Facts**

4. On November 18, 2015, pursuant to Appendix D to Schedule 1 of the Container Trucking Services Licence, the then Acting Commissioner directed Best Can to provide a compliance letter for directly employed drivers ("company drivers") from a certified professional accountant ("CPA") for the periods April 1, 2014 – April 30, 2014 and June 1, 2015 - June 30, 2015 ("the Appendix D audit period").
5. On January 27, 2016, the Office of the British Columbia Container Trucking Commissioner ("OBCCTC") received a compliance letter from Best Can's CPA indicating that Best Can was in compliance with the *Act* during the Appendix D audit period.

6. Following receipt of the compliance letter, then Acting Commissioner directed an OBCCTC auditor to conduct a spot audit, "... on the work performed by the CPA to determine that Best Can Trucking Ltd. was in compliance with the Act". The auditor selected a sample of drivers who worked for Best Can in April of 2014 and June of 2015 and requested and received relevant records and documentation from Best Can.
7. Best Can employed 16 company drivers in April 2014 and 17 company drivers in June 2015. It does not use independent operators.
8. Preliminary audit calculations disclosed that Best Can failed to pay its drivers the minimum rates required under the *Act*. However, upon further enquiry the auditor discovered that prior to the January 22<sup>nd</sup>, 2016 deadline imposed by the then Acting Commissioner<sup>1</sup> Best Can made an effort to bring itself into compliance by calculating and paying out retroactive pay to its drivers. At the time Best Can calculated and paid out \$68,298.66 in retroactive pay.
9. The auditor determined that Best Can's retroactive pay calculation results were arrived at using a rate of \$25.13 per hour for all company drivers regardless of the number of hours previously worked performing container trucking services. Under the *Regulation* company drivers who have performed 2,340 or more hours of container trucking services on behalf of any licensee are entitled to a higher minimum rate of \$26.28 per hour.
10. The auditor reviewed company driver job applications, hire dates and hours worked for the purpose of identifying which drivers were entitled to the higher rate and identified the dates upon which certain drivers were entitled to the higher hourly rate. This information was then provided to Best Can who redid their retroactive calculations for the purpose of determining the amounts of additional adjustment payments owing to some of its drivers.
11. Best Can's revised retroactive calculations, which were subsequently spot audited by the auditor for accuracy, disclosed that between April 3, 2015 and November 1, 2015, 13 company drivers were together owed additional compensation totaling \$18,444.35.
12. The auditor confirmed that by November 1, 2015 all company drivers were being paid at the rate of \$26.28 per hour.

13. In summary, the audit report records the following:

Initial Retroactive Pay Paid in Jan 2016	68,298.66
Additional Retroactive Pay owing as a result of audit	<u>18,444.64</u>
<b>Total Retroactive Pay</b>	<b><u>\$ 86,743.30</u></b>

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<sup>1</sup> In late 2015 and early 2016 the then Acting Commissioner communicated to the TLS community the OBCCTC's expectation that "all companies pay the retroactive pay owing to drivers immediately, and that the industry will be in full compliance of retroactive pay owing by January 22, 2016 at the latest".

14. Of the additional \$18,444.64 found to be owing, \$7,326.58 was calculated to be owing for the period between April 1, 2014 and December 31, 2014.
15. Best Can has accepted the audit results and issued adjustment cheques to company drivers in the amounts calculated to be owing. With payment of these adjustment amounts Best Can thereby brought itself into compliance with the *Act* and *Regulation* for the period prior to November 1, 2015. Additionally the auditor reported that, she is, “.....satisfied that Best Can is paying their employee drivers in accordance with the *Act* for hours worked performing container trucking services from November 2, 2015 onward to the present.”
16. Finally, the audit report confirms that Best Can maintained adequate records, was helpful during the audit process, and promptly replied to all emails and telephone calls.
17. I accept the audit results and the auditor’s findings as recorded above.

**Decision**

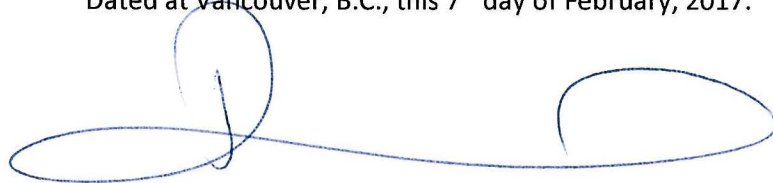
18. As described above, the circumstances of this case are that:
  - a) the then Acting Commissioner ordered an Appendix D audit and subsequently a further audit of Best Can’s company drivers;
  - b) prior to January 22<sup>nd</sup>, 2016 Best Can, in an effort to become compliant, calculated and paid its company drivers adjustment payments totaling \$68,298.66;
  - c) the audit process identified that the adjustment payments made by Best Can in early 2016 were inadequate, and that for the period between April 3<sup>rd</sup>, 2014 and November 1st, 2015 Best Can owed its company drivers a further \$18,444.64;
  - d) Best Can accepted the audit results and immediately paid the additional amounts determined to be owing;
  - e) since November 1st, 2015 Best Can has been paying its company drivers hourly rates which meet the requirements of the *Act* and *Regulation*;
  - f) Best Can’s record keeping was found to be compliant and Best Can was helpful during the audit process and responded promptly to all emails and telephone call.
  - g) Best Can is now substantially compliant with the legislation.
19. As Best Can has paid the amounts owing to its company drivers owing under the legislation and corrected its no-compliant payment practices, I find there is no need to issue an order pursuant to Section 9 of the *Act* requiring the company to pay its company drivers in compliance with the legislation.

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20. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's licence or imposing an administrative fine. Under Section 28 of the Regulation, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to \$500,000.
21. The seriousness of the available penalties indicates the gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and independent operators in compliance with the rates established by the legislation (*Act* and *Regulation*). Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.
22. In this case Best Can attempted to bring itself into compliance by the January 22<sup>nd</sup>, 2016 deadline imposed by the previous Acting Commissioner. At the time, it calculated and paid its company drivers adjustments totaling roughly \$68,000. However, Best Can's calculations failed to recognize that drivers who have performed 2340 or more hours of container trucking services on behalf of any licensee are entitled to receive the higher hourly rate of \$26.28 per hour. As a result it underpaid its drivers by roughly \$18,000.00 for the period prior to Nov. 1<sup>st</sup>, 2015 (of this, roughly \$7,000 was owing for the retroactive period between April 3<sup>rd</sup>, 2014 and December 22<sup>nd</sup>, 2014).
23. I find that when Best Can originally calculated its retroactive obligations, it reasonably should have known that drivers who performed 2340 or more hours of container trucking services on behalf of any licensee were entitled to the higher hourly rate of \$26.28 per hour. Like all licensees, Best Can is responsible to know its obligations under the *Act* and to ensure that it is paying compliant hourly rates. However unintentionally, Best Can failed to meet this obligation. Applying the penalty quantum factors articulated in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016), I have decided that a small administrative penalty of \$1,500.00 is appropriate in all of the circumstances. The relatively small amount of the fine recognizes Best Can's past compliance efforts while reinforcing its obligations to know and pay compliant rates. Had Best Can not made an effort to bring itself into compliance in January of 2016, the fine would have been much higher.
24. In the result and in accordance with Section 34(2) of the *Act*, I hereby give notice as follows:
- a. I propose to impose an administrative fine against Best Can in the amount of \$1,500.00;
  - b. Should it wish to do so, Best Can has 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
  - c. If Best Can provides a written response in accordance with the above I will consider its response, and I will provide notice to Best Can of my decision to either:
    - i. Refrain from imposing any or all of the penalty; or
    - ii. Impose any or all of the proposed penalty.
25. I have also directed that an audit of Best Can's independent operators be undertaken.

**Conclusion**

26. With this decision I remind licensees that under Section 13 of the *Regulation* company drivers are entitled to receive an hourly rate of \$26.28 once they have performed 2,340 hours of container trucking services on behalf of **any licensee**.
27. I also once again remind the industry that the onus to become and remain compliant with the requirements of the *Act* and the *Regulation* rest with the licensee. Licensees who fail to meet this obligation can reasonably expect to be fined.
28. This decision will be delivered to Best Can and published on the Commissioner's website ([www.obcctc.ca](http://www.obcctc.ca)).

Dated at Vancouver, B.C., this 7<sup>th</sup> day of February, 2017.



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Duncan MacPhail, Commissioner